

Marina Coast Water District

District Office
11 Reservation Road
Marina, California

Regular Board Meeting
January 10, 2012
6:45 p.m.

Draft Minutes

1. Call to Order:

President Burns called the meeting to order at 6:30 p.m. on January 10, 2012.

2. Roll Call:

Board Members Present:

Dan Burns – President
Howard Gustafson – Vice President
Jan Shriner
Kenneth K. Nishi
Bill Lee

Board Members Absent:

None

Staff Members Present:

Jim Heitzman, General Manager
Lloyd Lowrey, Legal Counsel
Carl Niizawa, Deputy General Manager/District Engineer
Jean Premutati, Management Services Administrator
Kelly Cadiente, Director of Administrative Services
Thomas Barkhurst, Water Quality Chemist
Brian True, Capital Projects Manager
James Derbin, Interim Operations and Maintenance Superintendent
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Richard Newhouse, Marina Resident
Bob Holden, MRWPCA
Andy Sterbenz, Schaaf & Wheeler
Christine Kemp, Noland, Hammerly, Etienne & Hoss
Denise Duffy, Denise Duffy & Associates
Allison Imamura, Denise Duffy & Associates
Daniel Dawson, Del Rey Oaks City Manager
Tim O'Halloran, City of Seaside
Gary Varga, Attorney for CA Utility Services

3. Closed Session:

A. Pursuant to Government Code Section 54957
Public Employee Performance Evaluation
Title: District Counsel

B. Pursuant to Government Code 54956.9
Conference with Legal Counsel – Existing Litigation
(Subdivision (a) of Section 54956.9)

1) Ag Land Trust v. Marina Coast Water District and Does 1-100, Monterey County Superior Court Case No. M105019 (First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief)

2) In the Matter of the Application of California-American Water Company (U 210 W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates, California Public Utilities Commission No. A.04-09-019

C. Pursuant to Government Code Section 54956.9
Conference with Legal Counsel – Anticipated Litigation
Significant Exposure to Litigation Pursuant to Subdivision (b)
One Case (Validity of agreements for the Regional Desalination Project)

D. Pursuant to Government Code Section 54959.9
Conference with Legal Counsel – Anticipated Litigation
Potential Initiation of Litigation (c)
One Case

The Board ended closed session at 7:06 p.m. President Burns reconvened the meeting to open session at 7:07 p.m.

4. Possible Action on Closed Session Items:

Mr. Lloyd Lowrey, Legal Counsel, reported the following:

3-A – no action was taken.

3-B – the Board of Directors conferred with Legal Counsel, no action was taken.

3-C – the Board of Directors conferred with Legal Counsel, no action was taken.

3-D – the Board of Directors conferred with Legal Counsel, no action was taken.

5. Pledge of Allegiance

President Burns led everyone present in the pledge of allegiance.

6. Oral Communications:

No comments were made.

7. Presentation:

- A. Consider Adoption of Resolution No. 2012-01 in Recognition and Appreciation of Director William Y. Lee's Service as Board President from December 2010 through December 2011:

Director Gustafson made a motion to adopt Resolution No. 2012-01 recognizing Director William Y. Lee's service as Board President from December 2010 through December 2011. Director Shriner seconded the motion. The motion was passed.

Director Lee	-	Abstained	Vice President Gustafson	-	Yes
Director Shriner	-	Yes	President Burns	-	Yes
Director Nishi	-	Yes			

President Burns read the narration and presented Director Lee with a plaque in recognition of his service as President of the Board during 2011.

8. Consent Calendar:

Vice President Gustafson made a motion to approve the Consent calendar consisting of:

- A) Adopt Resolution No. 2012-02 to Amend the Professional Services Agreement with Harris & Associates for Inspection Services for the East Garrison Development
- B) Receive the Quarterly Financials for July 1, 2011 through September 30, 2011
- C) Approve the Expenditures for the Month of December 2011
- D) Approve the Draft Minutes of the Regular Board Meeting of December 13, 2011

Director Shriner seconded the motion. The motion was passed.

Director Lee	-	Yes	Vice President Gustafson	-	Yes
Director Shriner	-	Yes	President Burns	-	Yes
Director Nishi	-	Yes			

9. Public Hearing:

- A. Receive an Update on the Ord Community Annexation Process and Receive Public Comments on the Proposed Draft Ord Community Sphere of Influence Amendment, Service Area Annexation and Draft Initial Study/Negative Declaration:

Mr. Carl Niizawa, Deputy General Manager/District Engineer, introduced this item and Ms. Denise Duffy of Denise Duffy and Associates. Ms. Duffy provided a brief background of the Annexation process, the Sphere of Influence Amendment, and the draft Initial Study/Negative Declaration.

President Burns opened the Public Hearing at 7:16 p.m.

Mr. Gary Varga, Attorney for California Utility Services, explained that California Utility Services provided sewer service to most of the Toro Park area and suggested that the District look into the possibility of conflict between the territories. He suggested looking for any overlap and the practicality of the District extending services that far out. Mr. Varga handed out a letter that encompassed his comments.

President Burns closed the Public Hearing at 7:20 p.m.

10. Action Items:

- A. Consider Forming an Ad Hoc Committee to Address Issues Related to the Ord Community Annexation Process:

Mr. Jim Heitzman, General Manager, introduced this item and commented that staff believed an Ad Hoc Committee that would meet with staff on a regular basis would allow them to move more efficiently in the pursuit of the annexation.

Director Nishi requested to return to item 9-A.

- A. Receive an Update on the Ord Community Annexation Process and Receive Public Comments on the Proposed Draft Ord Community Sphere of Influence Amendment, Service Area Annexation and Draft Initial Study/Negative Declaration:

Director Nishi commented that ~~he would like~~ the second to the last bullet on page 6 of the Initial Study was incorrect where it states “(the property is proposed to be used for the regional desalination plant)”. He would like the sentence corrected to say that the Armstrong property was not purchased for the Regional Desalination Plant and that only a portion of the property is to be used for the Regional Desalination Plant, to reflect that a “portion” of the Armstrong Ranch is to be used for the Regional Desalination Plant, not the entire property. Director Nishi said that

it needs to be corrected because the District is in litigation over the Project and an incorrect statement could be detrimental.

Mr. Lowrey commented that the agreement with the Armstrong family for the acquisition of the property, allowed that the property was only to be used for the production, treatment, storage, and distribution of water. ~~with A~~approximately ten acres are to be utilized for the Regional Desal Plant.

Return to Agenda Item 10-A:

A. Consider Forming an Ad Hoc Committee to Address Issues Related to the Ord Community Annexation Process:

Director Shriner suggested that Board members contact Mr. Niizawa directly with their comments.

Director Shriner stated that a previous Ord Community Ad Hoc Committee was comprised of public members and asked if this committee would have public members as well as Board members. Mr. Lowrey clarified that the recommendation was to only have two Board members who would work with staff to allow a more efficient process for the annexation. He said that in the future there may be public participation, but right now the District needs to review, digest, and consider the appropriate next steps based on the comments received to date.

President Burns asked Mr. Lowrey what the next step was. Mr. Lowrey commented that it would be appropriate to have a motion to create the Ad Hoc Committee then the President will make the appointments. Mr. Heitzman added that the appointments could be made at a later time.

Vice President Gustafson made a motion to form an Ad Hoc Committee to address issues related to the Ord Community Annexation process.

Director Nishi called for a point of order and commented that the Board Procedures Manual states that the President will appoint to an Ad Hoc Committee. Director Nishi asked why the Board is voting to create an Ad Hoc Committee when they don't need to, and cautioned that this could set a precedent for future Ad Hoc Committees.

President Burns asked what the next course of action would be. Mr. Lowrey stated that his original recommendation remained, but that it would be the Board President's decision of what he wanted to do. Director Nishi asked for Mr. Lowrey's legal recommendation.

Mr. Lowrey opined that his legal recommendation is to create the Ad Hoc Committee for this particular matter because of the importance of it and that it has been a long standing matter of great interest to the public over the last several years.

Director Shriner asked for clarification on the definition of an Ad Hoc Committee. Mr. Lowrey answered that an Ad Hoc Committee is only for a short period of time, considers a specific matter and reports back to the Board. He added that as Director Nishi pointed out, it is not legally required for the Board to create one; he is just making the recommendation.

Return to Agenda Item 10-A:

Director Shriner made a motion to create an Ad Hoc Committee for the Board President to appoint members to. The motion died for lack of a second.

President Burns stated that he will appoint people to the Ad Hoc Committee and asked if anyone was interested in being on the Committee. Director Gustafson said he was interested in volunteering. Director Shriner said she also was interested in volunteering. President Burns said he would consider it as well. President Burns stated that he would make his final decision at a later time.

B. Consider Directing Staff to Draft a Request for Proposals for District Legal Services:

Mr. Lowrey and Ms. Christine Kemp recused themselves from the room.

Mr. Heitzman introduced this item.

Director Nishi made a motion to direct staff to draft a Request for Proposals for District Legal Services. Director Lee seconded the motion. The motion was passed.

Director Lee	-	Yes	Vice President Gustafson	-	Yes
Director Shriner	-	No	President Burns	-	No
Director Nishi	-	Yes			

C. Consider Adoption of Resolution No. 2012-03 to Direct Staff to Distribute a Request for Proposals to Conduct a District Compensation and Classification Survey:

Mr. Heitzman introduced this item. Director Nishi asked what the last salary survey cost the District. Ms. Jean Premutati, Management Services Administrator, stated that the survey was done in 2003 and she would have to look up the cost and report back to the Board. Director Nishi voiced his concern over placing a cap on the cost of the survey. He asked if Ms. Premutati knew how much FORA paid for their recent survey. Ms. Premutati answered that the cost was about \$20,000. Director Nishi commented that FORA had a third of the number of employees the District has and said he would like to see more documentation that \$25,000 is a realistic number.

Vice President Gustafson made a motion to adopt Resolution No. 2012-03 to Direct Staff to Distribute a Request for Proposals to Conduct a District Compensation and Classification Survey. President Lee seconded the motion. The motion was passed.

Director Lee	-	Yes	Vice President Gustafson	-	Yes
Director Shriner	-	Yes	President Burns	-	Yes
Director Nishi	-	No			

D. Consider Director Appointments to Standing Committees of the Board and to Outside Agencies for 2012:

President Burns recommended the following appointments to the standing committees of the Board and to outside agencies for 2012:

Water Conservation	Jan Shriner - Dan Burns, Alternate
Joint City/District	Howard Gustafson and Jan Shriner – Dan Burns, Alternate
Budget & Personnel	Dan Burns and Howard Gustafson – Ken Nishi, Alternate
Executive	Dan Burns and Howard Gustafson – Ken Nishi, Alternate
MRWPCA	Ken Nishi – Jan Shriner, Alternate
LAFCO	Ken Nishi – Dan Burns, Alternate
FORA	Ken Nishi – Howard Gustafson, Alternate
Special Districts Assoc.	Howard Gustafson, Carl Niizawa, Alternate
JPIA	Jan Shriner – Dan Burns, Alternate
Community Outreach	Howard Gustafson and Dan Burns

Director Nishi asked if each Board member can get a copy of the recommended appointments. Ms. Riso made copies for each Board member.

Director Nishi commented that an Operations & Maintenance Committee is not listed. President Burns stated that he hadn't yet decided if he wanted to reinstate the Operations & Maintenance Committee. Director Nishi voiced his concern over not having an Operations & Maintenance Committee especially with the recent sewer backup on the former Fort Ord.

Director Nishi stated that he had served on these committees for a long time and suggested that Director Shriner be the primary representative for the MRWPCA with himself as the alternate and having Vice President Gustafson be the primary representative for FORA with himself as the alternate.

President Burns commented that because there are some important issues between the District and the MRWPCA that Director Shriner may not be aware of, it would be in the District's best interest to have Director Nishi as the primary representative with MRWPCA. Director Nishi commented that the Board can vote for what they want, but that didn't mean he would attend the meetings.

Director Lee made a motion to approve the appointments with Director Nishi's changes. President Burns said that he couldn't agree with that. Mr. Lowrey said that these were Board appointments and that whatever motion is approved by a majority vote will stand. President Burns withdrew his appointment recommendation for the MRWPCA and tabled that recommendation until a later date. Director Shriner asked if President Burns was okay with the switch of the FORA primary and alternate. President Burns said he was fine with that change.

Agenda Item 10-D (continued):

Director Shriner made a motion to approve the following appointments with the MRWPCA appointment tabled until a later date.

Water Conservation	Jan Shriner - Dan Burns, Alternate
Joint City/District	Howard Gustafson and Jan Shriner – Dan Burns, Alternate
Budget & Personnel	Dan Burns and Howard Gustafson – Ken Nishi, Alternate
Executive	Dan Burns and Howard Gustafson – Ken Nishi, Alternate
LAFCO	Ken Nishi – Dan Burns, Alternate
FORA	Howard Gustafson – Ken Nishi, Alternate
Special Districts Assoc.	Howard Gustafson, Carl Niizawa, Alternate
JPIA	Jan Shriner – Dan Burns, Alternate
Community Outreach	Howard Gustafson and Dan Burns

Vice President Gustafson seconded the motion. The motion was passed.

Director Lee	-	Yes	Vice President Gustafson	-	Yes
Director Shriner	-	Yes	President Burns	-	Yes
Director Nishi	-	Yes			

11. Informational Items:

A. General Manager's Report:

No report.

B. District Engineer's Report:

No report.

C. Counsel's Report:

No report.

D. Committee and Board Liaison Reports:

1. Water Conservation Commission:

No report.

2. Joint City-District Committee:

No report.

3. Budget and Personnel Committee:

President Burns commented that the minutes are included in the packet.

4. Executive Committee:

President Burns commented that the minutes are included in the packet.

5. Community Outreach:

Vice-President Gustafson commented that the outreach firm has been interviewed and they were already given something to work on by Mr. Niizawa.

6. MRWPCA Board Member:

Director Nishi commented that the next meeting is scheduled for the end of the January.

7. FORA

Director Nishi said the meeting was scheduled for Friday, January 13th.

8. LAFCO Liaison:

Director Nishi commented that the next meeting is scheduled for the end of the January.

9. JPIA Liaison:

Director Shriner commented that the District received some certificates and copies of those were provided under correspondence, and there were free forums coming up at ACWA.

10. Special Districts Association Liaison

Vice President Gustafson commented that the meeting was January 17th.

11. CalDesal:

President Burns commented that the next meeting is February 2nd.

12. Regional Desalination Reports:

Mr. Heitzman stated that the next report was due later in the month.

12. Director's Comments:

Director Shriner thanked staff for sending out quarterly updates via email and questioned if the Regional Desal Reports would be on the website. She suggested there be more work on District policies such as the Purchasing Policy and Tech Plan.

13. Adjournment:

The meeting was adjourned at 7:54 p.m.

APPROVED:

Dan Burns, President

ATTEST:

Jim Heitzman, General Manager